view on a proper reading, the will clearly specified for a *per capita* distribution.

The answers to the questions of the trustee are therefore these:

(a) Thor Keng Seng and Thor Keng Hock are the lawful male issue of Thor Teng Eng, within the meaning of clause 10 of the will and

(b) the nett residuary estate is to be divided among Thor Keng Hong, Thor Keng Seng and Thor Keng Hock equally.

I will now hear arguments as to costs.

Order accordingly.

Solicitors: *G. H. Goh & Co.; Ong Huck Lim & Co.; S. Thillaimuthu & Co.*

PUBLIC PROSECUTOR v. TAN ENG HOCK

[A.Cr. J. (Abdul Aziz J.) July 21, 1969]

[Kuala Lumpur — Criminal Appeal No. 36 of 1969]

Penal Code, s. 379 — Theft of motor car — Sentence — Principles guiding.

Criminal Law and Procedure — Sentence — Principles guiding — Sentence of binding over — Criminal Procedure Code (Cap. 6) ss. 173A & 422.

The respondent was charged with the theft of a motor car to which he pleaded guilty and on his plea he was convicted and bound over under section 173A of the Criminal Procedure Code (Cap. 6). The Public Prosecutor appealed.

Held, allowing the appeal: (1) an order of a binding over under section 173A of the Criminal Procedure Code after recording a conviction is illegal and the defect cannot be cured by section 422;

(2) having regard to the number of cases of car theft, a sentence of binding over is neither appropriate nor relevant enough. Sentence varied to 18 months' imprisonment.

MAGISTRATES' CRIMINAL APPEAL.

Mokhtar bin Sidin (Deputy Public Prosecutor) for the appellant.

Joginder Singh for the respondent.

Abdul Aziz J. (delivering oral judgment): The respondent was charged under section 379 of the Penal Code with theft of a motorcar valued at $4,800 belonging to one Yap Chai Leong. To that charge, he pleaded guilty and on his plea of guilty he was convicted and bound over under section 173A of the Criminal Procedure Code to be of good behaviour and to keep the peace for one year.

The facts of the case as given by the prosecuting officer are:

On 24th February 1969 at 7 p.m., the owner of the car, one Yap Chai Leong, parked his car in front of the Lido Cinema, Klang, to see a show. When he came out of the cinema, he found that somebody had stolen his car. He therefore lodged a report. On 29th March 1969, about a month after the theft of the car, the police laid an ambush near the Cathay Cinema. On the same evening, the accused was seen driving the stolen car. He was arrested and it was found that the car was carrying a false number plate.

The accused admitted the facts of the case. The learned trial magistrate in assessing sentence took into account the fact that the accused was a first offender and that he has a wife and a child and aged parents to support. He therefore bound the accused over under section 173A of the Criminal Procedure Code. Manifestly, an order of a binding over under section 173A of the Criminal Procedure Code after recording a conviction is illegal and the defect cannot be cured by section 422 of the Criminal Procedure Code as urged by the respondent's counsel. The order of binding over must, therefore, be quashed.

Having quashed the sentence, what is the appropriate sentence to be imposed by this court? I am aware that in considering the appropriate sentence the court should always be guided by certain principles: the first and foremost is the public interest. The criminal law is publicly enforced, not only with the object of punishing a crime but also of preventing it. In fixing sentence, the nature and the circumstances and the degree of deliberation must be taken into account. When there is no deliberation and the accused has a good record of antecedent, age and character, a bond would be justified. Apart from the fact that respondent is a first offender, there are no mitigating factors in the case. The accused was 28 years of age at the time of the commission of the offence. The fact that he was arrested a month after the offence was committed and that he had changed the number plate shows that this was a deliberate act and not an impulsive act of bravado. Car theft is a fairly common offence and invariably it leads to more serious crimes. It is manifest, having regard to the number of such cases, that a sentence of binding over is neither appropriate nor relevant enough. The appeal is, therefore, allowed and the sentence shall be varied to 18 months' imprisonment.

Appeal allowed.

Solicitors: *Joginder Singh & Co.*

ALI AMBERAN v. TUNKU ABDULLAH

[O.C.J. (Raja Azlan Shah J.) January 9, 1970]

[Kuala Lumpur — Election Petition No. 6 of 1969]

Elections — Election handbills — Causing to be printed election handbills or advertisements which do not bear name and address of printer — Whether candidate liable for acts of members of political party setting up candidate — Extended scope of agency — Corrupt practices — Election Offences Act, 1954, (Revised 1969) ss. 3(m) & 11(1)(c).

Agency — Extended scope of — Election law — Acts of members of political party.

The petitioner sought to avoid an election on 3 grounds: (1) corrupt practice was committed in causing to be printed election handbills or advertisements without the name and address of the printer; (2) illegal practice was committed in